Supreme Court, U.S.
FILED

03-1446 APR 15 2004

In The

Supreme Court of the United States

JOEL ROMO,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Criminal District Court, Parish Of Orleans, State Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is L.S.A.-R.S. 44:9(2)(B)(1)(b) unconstitutional on its face as being vague in regards to how it is to be applied in expungement of certain felony cases, discriminating against defendants charged and acquitted of certain crimes, simply due to the heinous nature of the crime itself and for no other reason? Being vague, this statute is unconstitutional under the due process and equal protection clauses and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution and applicable provisions of the Louisiana State Constitution.

2. Since Mr. Romo was acquitted of the crime he was originally charged with in the trial court, is he not presumed to be innocent of said crime, and therefore, have the right to have that charge expunged from his record?

3. Since L.S.A.-R.S. 44:9(2)(B)(1)(b) is unconstitutional on its face for vagueness, will not the application of this statute in this and other cases cause material injustice and significantly affect the public interest?

LIST OF ALL PARTIES

1. Joel Romo, Plaintiff-petitioner.
2. State of Louisiana, through Orleans District Attorney, Eddie Jordan, Jr. and Assistant District Attorney, Meri M. Hartley, Defendant-respondent.

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OPINIONS BELOW

Mr. Romo was arrested on June 15, 1996, and charged with one (1) count of molestation of a juvenile in violation of L.S.A.-R.S. 14:81.2 and two counts of aggravated incest in violation of L.S.A.-R.S. 14:78.1. These charges were refused by the district attorney for Orleans Parish and instead by way of a bill of information dated August 26, 1996, instituted the charge of aggravated crime against nature in violation of L.S.A.-R.S. 14:89.1. Mr. Romo stood trial on May 6, 1997, and was fully acquitted by the jury. On April 4, 2000, Mr. Romo filed a petition with the Criminal District Court for the Parish of Orleans seeking expungement of his acquittal under L.S.A.-R.S. 44:9(2)(B)(1)(b) and he was denied same. He then asked for a hearing on the record which was scheduled for December 12, 2000. At the hearing, the judge heard oral arguments and took the matter under submission, even though the State had no objection to the request for expungement of the acquittal. The district court on January 17, 2003, denied applicant's petition for expungement of the acquittal. This decision was appealed to the Fourth Circuit Court of Appeal and on May 16, 2003, said court denied Mr. Romo's application for supervisory writs and without reasons. Then, on January 16, 2004, the Louisiana Supreme Court denied supervisory writs and it is from that denial of supervisory writs in the Louisiana State Supreme Court as well as the district court written opinion of January 17, 2003 that applicant Joel Romo now applies to the United States Supreme Court through petition for a writ of certiorari for relief.

STATEMENT OF JURISDICTION

The judgment sought to be reviewed was entered on January 17, 2003, by the Criminal District Court for the Parish of Orleans, State of Louisiana; the Louisiana Court of Appeal, Fourth Circuit denied discretionary review by order dated May 16, 2003; the Louisiana Supreme Court then denied discretionary review by order dated January 16, 2004. This Court has jurisdiction to review the judgment on a writ of certiorari pursuant to 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL PROVISIONS

1.) AMENDMENT V of the U. S. Constitution

2.) AMENDMENT XIV of the U. S. Constitution

3.) ARTICLE I, Section 2 of the 1974 La. Constitution

4.) ARTICLE I, Section 3 of the 1974 La. Constitution

5.) ARTICLE I, Section 4 of the 1974 La. Constitution

6.) ARTICLE I, Section 5 of the 1974 La. Constitution

7.) ARTICLE V, Section 5 of the 1974 La. Constitution

STATEMENT OF THE CASE

Mr. Romo was arrested on June 15, 1996, and charged with one (1) count of molestation of a juvenile in violation of L.S.A.-R.S. 14:81.2 and two counts of aggravated incest in violation of L.S.A.-R.S. 14:78.1. These charges were refused by the district attorney for Orleans Parish and instead by way of a bill of information dated August 26, 1996, instituted the charge of aggravated crime against nature in violation of L.S.A.-R.S. 14:89.1. Mr. Romo stood

trial on May 6, 1997, and was fully acquitted by the jury. On April 4, 2000, Mr. Romo filed a petition with the Criminal District Court for the Parish of Orleans seeking expungement of his acquittal under L.S.A.-R.S. 44:9(2)(B)(1)(b) and he was denied same. He then asked for a hearing on the record which was scheduled for December 12, 2000. At the hearing, the judge heard oral arguments and took the matter under submission, even though the State had no objection to the request for expungement of the acquittal. The district court on January 17, 2003, denied applicant's petition for expungement of the acquittal. This decision was appealed to the Fourth Circuit Court of Appeal and on May 16, 2003, said court denied Mr. Romo's application for supervisory writs and without reasons. Then, on January 16, 2004, the Louisiana Supreme Court denied supervisory writs and it is from that denial of supervisory writs in the Louisiana State Supreme Court as well as the district court written opinion of January 17, 2003 that applicant Joel Romo now applies to the United States Supreme Court through petition for a writ of certiorari for relief.

REASONS FOR ALLOWANCE OF WRIT

L.S.A.-R.S. 44:9(2)(B)(1)(b) is unconstitutional on its face as being vague in regards to how it is to be applied in expungement of certain felony cases, discriminating against defendants charged and acquitted of certain crimes, simply due to the heinous nature of the crime itself and for no other reason. Being vague, this statute is unconstitutional under the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution and applicable provisions of the Louisiana State Constitution.

L.S.A.-R.S. 44:9(2)(B)(1)(b) is vague and is unconstitutional on its face and as such a violation as well as the applicable Sections and Articles of the Louisiana Constitution as amended in 1974.

L.S.A.-R.S. 44:9(2)(B)(1)(b) does not define what exactly "probative value" is and what factors the courts should look at in determining if the crime as charged has substantial probative value or not in reaching a determination if it will be of substantial probative value as a prior act for any subsequent prosecution of the defendant. The District Judge in the case at bar read the pertinent part of this statute (2)(B)(1)(b) to mean that she did not have any discretion to allow the expungement of the record and therefore, could not even get to the decision of whether or not the crime of which applicant was acquitted was substantially probative in nature for use in any subsequent prosecution. She read the statute as not allowing discretion in fact as written it does. This shows just how vague this law is on its face and should be struck down as being in violation of the United States and Louisiana Constitutions, thereby causing material injustice and significantly affecting the public interest.

The application before this court is appropriate for review relative to the first assignment of error, namely, that the statute relied on by the District Court and that Court's decision previously reviewed on appeal by the Fourth Circuit Court of Appeals which denied supervisory writ review, because there are (a) significant unresolved issues of law before the Court today and (b) because the District Court erroneously interpreted and applied the statute in question, namely, L.S.A.-R.S. 44:9(2)(B)(1)(b), in this case.

L.S.A.-R.S. 44:9(2)(B)(1)(b) is patently vague on its face as it does not set forth any criteria by which the District Court can look to determine whether or not the record of the crime to be expunged "is an offense without substantial probative value as a prior act for any subsequent prosecution." The judge in the District Court must take a shot in the dark to determine what factors or guidelines he or she must look to in determining whether to expunge the record of the crime. This is a significant unresolved issue of law before the Court today since theme is clearly a question as to whether or not this section of R.S. 44:9 is unconstitutional and violative of the due process and equal protection clauses of the Fifth and Fourteenth Amendments of the Constitution of the United States and applicable provisions of the Louisiana State Constitution as being vague in not setting forth critical criteria the Court must look at to determine "if the offense is without substantial probative value as a prior act for any subsequent prosecution. As an example, the district judge in the case at bar was so confused by the statute, she simply ruled she did not have discretion under the statute to expunge the applicant's record. Does this possibly portend that all or most future expungement applications will likewise be denied due to vagueness and confusion under this statute?

Because of this inequity and problem of interpretation and application of this statue, applicant has been denied employment due to the fact that his due process and equal protection rights guaranteed to him by the United States Constitution have been violated.

CONCLUSION

For these reasons, Section (2)(B)(1)(b) of L.S.A.-R.S. 44:9 should be struck down by this Court, as unconstitutional under the United States and Louisiana Constitutions as amended, thereby reversing the decisions of the trial Court, Court of Appeals and the Louisiana Supreme Court and remanding this matter to the trial court to afford applicant, Mr. Romo, a trial de novo regarding expungement of his record with the appropriate instructions on the law from this Honorable Court as to what criteria the court should review to determine "if the offense is without substantial probative value as a prior act for subsequent prosecution" or to strike down that part of the statute, namely Section (2)(B)(1)(b) and let the legislature correct it.

Additionally, since the applicant, Mr. Romo, was acquitted of the crime at the trial level, he should be cloaked with the presumption of innocence, thereby permitting him to have his criminal record of said crime fully and completely expunged.

Respectfully submitted,

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CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

STATE OF LOUISIANA	CASE NUMBER 384-841
VERSUS	SECTION: "H"
JOEL ROMO	

TRANSCRIPT OF THE RULING AS HELD IN THE ABOVE MENTIONED MATTER IN OPEN COURT ON THE DATE OF JANUARY 17, 2003, BEFORE THE HONORABLE CAMILLE BURAS, JUDGE PRESIDING, SECTION "H", CRIMINAL DISTRICT COURT, PARISH OF ORLEANS.

APPEARANCES:

FOR THE STATE:

DAVID ABDULLAH, ESQUIRE

FOR THE DEFENSE:

JO ANN LLOYD, ESQUIRE
LINDA TORY, ESQUIRE

REPORTED BY: PHYLLIS JACOMET, RPR

PROCEEDINGS

THE COURT: All right. We have Joel Romo, 384-841.

MS. TORY: Good morning, your Honor. Ms. Linda and Jo Ann Lloyd representing Mr. Romo. We are here for a ruling on a motion for expungement.

THE COURT: All right. At this time the Court's reviewed the motion and order and argument put forth in the argument on the motion to expunge. I don't think the State filed a response on this case. But, again, the Court's reviewed 449 and in light of my interpretation of 449 the court does not feel that it's within my discretion to expunge this case in nature of the charges, the arrest and the sexual nature of the charges.

And, therefore, the Court is denying the motion and order for expungement as to Mr. Romo at this time.

MS. TORY: Your Honor, note our intention to object – I'd like to give notice of my intention to take writs, your Honor.

THE COURT: All right. Objection noted. Defense objection noted and notice of intent to take a writ or appeal the Court's ruling.

Do you'll [sic] want to approach?

[BENCH CONFERENCE]

THE COURT: The case, we'li put it on – how about March 14?

MS. LLOYD: That's fine, your Honor.

THE COURT: Is that good? March 14 filing of writs on the Court's ruling denying the motion for expungement.

[END PROCEEDINGS]

NO. 2003-K-0496

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

JOEL ROMO

IN RE: JOEL ROMO

APPLYING FOR: SUPERVISORY WRIT APPLICATION

DIRECTED TO: HONORABLE CAMILLE BURAS,
JUDGE
CRIMINAL DISTRICT COURT
ORLEANS PARISH
SECTION "H", 384-841

WRIT DENIED

On the showing made relator's writ application is hereby **DENIED**.

New Orleans, Louisiana this 16th day of May 2003.

/s/ DRB
JUDGE DENNIS R. BAGNERIS SR

/s/ CRJ
JUDGE CHARLES R. JONES

/s/ MEK
JUDGE MICHAEL E. KIRBY

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

VS. NO. 2003-OK-1757

JOEL ROMO

IN RE: Romo, Joel; – Defendant; Applying for Supervisory and/or Remedial Writs, Parish of Orleans, Criminal District Court Div. H, Nos. 384-841; to the Court of Appeal, Fourth Circuit, No. 2003-K-0496

January 16, 2004

Denied.

JLW

PFC

CDK

BJJ

JPV

CDT

JTK

Supreme Court of Louisiana
January 16, 2004

/s/ Katherine A. Fontana
Deputy Clerk of Court
For the Court